

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219982 **DATE:** September 11, 1985
MATTER OF: Hartridge Equipment Corporation

DIGEST:

1. When a protest alleging solicitation improprieties has been filed initially with the contracting agency, the agency's continued receipt of proposals as scheduled without taking the corrective action requested by the protester constitutes initial adverse agency action, and any subsequent protest to GAO must be filed within 10 working days after the proposal closing date in order to be timely.
2. A protester's continued pursuit of an agency-level protest following initial adverse agency action does not toll GAO's filing requirements, and a protester may not wait until it receives the agency's formal decision on the protest before coming to GAO.

Hartridge Equipment Corporation protests certain specifications under request for proposals (RFP) No. DAAA09-84-R-0624, issued by the Department of the Army for the acquisition of fuel injection test stands. We dismiss the protest as untimely.

The scheduled closing date for receipt of initial proposals was December 20, 1984. On December 14, Hartridge filed a protest with the Army alleging that the RFP's specifications in certain areas exceeded the agency's actual minimum needs and that others were ambiguous. Hartridge did not submit a proposal, and the closing occurred as scheduled. By telegram of January 31, 1985, Hartridge requested the Army to advise the firm of the status of its protest and to indicate when the Army would decide the matter. On February 11, the Army responded that the protest was currently being considered and that a determination would be reached shortly.

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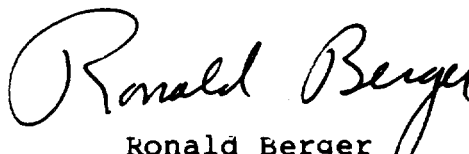
By letter of July 31, the Army denied Hartridge's protest. Hartridge then filed a protest with this Office on August 16, which the firm asserts is timely because it was filed within 10 working days after it received formal notification of the Army's July 31 denial. We do not agree.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), specifically provide that if a protest has been filed initially with the contracting agency, any subsequent protest to this Office must be filed (received) within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. "Adverse agency action" is any action or inaction on the agency's part which is prejudicial to the position taken in a protest filed with the agency, and includes the agency's continued receipt of proposals as scheduled without taking the corrective action requested by the protester. 4 C.F.R. § 21.0(e); Monaco Enterprises, Inc., B-217037, June 7, 1985, 85-1 CPD ¶ 654.

Since Hartridge knew or should have known that the proposal closing occurred as scheduled on December 20, the firm therefore was required to protest to this Office within 10 working days of that date. Accordingly, the firm's August 16 protest is clearly untimely and will not be considered. 4 C.F.R. § 21.3(f)(7).

The fact that Hartridge expressed continued interest in its protest to the Army, as evidenced by its January 31 telegram, does not alter this result. Bobnreen Consultants, Inc., B-218214.3, May 31, 1985, 85-1 CPD ¶ 636. In this regard, it is well-settled that a protester's continued pursuit of a matter with the agency following initial adverse agency action does not toll our filing requirements. Birdsboro Corp.--Reconsideration, B-218100.2, Mar. 11, 1985, 85-1 CPD ¶ 299. Moreover, although the Army did not deny the protest until July 31, a protester may not wait until it receives the agency's formal decision on the protest before coming to this Office once the initial adverse action has occurred. Monaco Enterprises, Inc., B-217037, supra.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel

